

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

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|--------------------------|---|---------------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | CRIMINAL NO. 1:11CR199 |
| v. |) | |
| |) | Arraignment Date: July 27, 2011 |
| EDWARD MACAULEY, et al. |) | |
| |) | The Honorable James C. Cacheris |
| Defendants. |) | |

POSITION OF THE UNITED STATES WITH RESPECT TO ARRAIGNMENT

The United States of America, through its attorneys, Neil H. MacBride, United States Attorney, and James P. Gillis and Karen L. Dunn, Assistant United States Attorneys, files this Position of the United States with Respect to Arraignment. Because four defendants in the above-titled case were arrested in Ghana and have not yet arrived in the Eastern District of Virginia, and because delay resulting from their removal to this District is excludable under the Speedy Trial Act, the United States hereby requests that a status hearing be held on Friday, August 26, 2011, at which time an appropriate trial date can be set.

On April 28, 2011, the Grand Jury returned an indictment in the above-titled case, charging eight defendants with offenses related to importation of heroin. As part of a coordinated operation in Ghana, New York, and Maryland, seven defendants were arrested on July 14, 2011. The three defendants arrested in the United States (including defendants Theophilus AKWEI and Joseph DUODO scheduled for arraignment on July 27, 2011) have made initial appearances in the Eastern District of Virginia. The four defendants arrested in Ghana are awaiting extradition.

The United States Attorney's Office for the Eastern District of Virginia is working with

the Department of Justice on an extradition package that will be submitted as soon as possible to the Ghanaian authorities. The government expects full and prompt assistance from the Ghanaian authorities in bringing the four defendants to the Eastern District of Virginia.

The delay associated with bringing the Ghanaian defendants to this District is excludable under the Speedy Trial Act, *see* 18 U.S.C. § 3161(h)(3(A)) (delineating an exclusion for any period of delay resulting from the unavailability of a defendant), and the Fourth Circuit has held that, “[i]n a case involving several defendants, time excludable for one defendant is excludable for all defendants,” *United States v. Jarrell*, 147 F.3d 315, 316 (4th Cir. 1998). This is because, as in the instant case, “[t]here is a strong preference for trying codefendants together as it promotes judicial efficiency by avoiding successive trials involving the same evidence.” *United States v. Izegwire*, 2010 WL 1141421 (4th Cir. 2010) (citing *United States v. Khoury*, 901 F.2d 948, 972 (11th Cir. 1990). Even “reasonable delay attributable to the fugitive status of a co-indictee is excludable as to those defendants awaiting trial.” *Id.*

The government therefore submits that, in accordance with the Speedy Trial Act, it is in the interest of judicial efficiency for this Court to hold a status hearing on August 26, 2011. By that date, the government anticipates that progress will have been made in bringing all defendants to be tried in this case to this District. Furthermore, by that date, some of these matters may have been resolved through plea negotiations. On August 26, 2011, the Court will have significantly more information that it does now by which to determine an appropriate trial date.

Respectfully submitted,

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/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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/s/

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